

McGlinchey Stafford, PLLC
Richard A. Aguilar, Esq. (Admitted *Pro Hac Vice*)
Rudy J. Cerone, Esq. (Admitted *Pro Hac Vice*)
Mark J. Chaney, Esq. (Admitted *Pro Hac Vice*)
12th Floor, 601 Poydras Street
New Orleans, Louisiana 70130
Telephone: (504) 586-1200
Facsimile: (504) 596-2800
Attorneys for
Automotive Rentals, Inc. and ARI Fleet LT

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:	*	CHAPTER 11
	*	
SEARS HOLDINGS CORPORATION, <i>et al.</i>	*	CASE NO. 18-23538 (RDD)
	*	Jointly Administered
Debtors.¹	*	

**LIMITED OBJECTION OF AUTOMOTIVE RENTALS, INC. AND ARI FLEET LT
TO NOTICE OF CURE COSTS [ECF DOC. 1731]**

Automotive Rentals, Inc. and ARI Fleet LT (collectively “**ARI**”), hereby submit this limited objection to the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

“**Cure Notice**”) [ECF Doc. 1731] filed by the Debtors, and in support thereof, state as follows:

BACKGROUND

1. Beginning on October 15, 2018 (the “**Petition Date**”), each of the above-captioned debtors (the “**Debtors**”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Court**”).

2. ARI provided, and continues to provide, vehicle leasing and management services, as well as other services related thereto, to Sears Holdings Management Corporation and its Affiliates², including, without limitation, the Debtors pursuant to that certain Master Agreement for Fleet Vehicle Leasing and Maintenance Services dated effective as of December 1, 2009, as amended from time to time (the “**Master Agreement**”), and the Debtors provided, and continue to provide, vehicle maintenance and repair services to ARI.

3. The Master Agreement is both an executory contract and an unexpired lease of personal property, as those terms are used in § 365 and other provisions of the Bankruptcy Code. Approximately 7000 vehicles owned by ARI are leased pursuant to the Master Agreement (the “**Leased Vehicles**”).

4. In the Cure Notice, the Debtors claim the cure costs due pursuant to section 365 of the Bankruptcy Code, with respect to assumption and assignment of the Master Agreement, is **\$4,199,391**. (ECF Doc. No. 1731, at Item 894 on p. 45 of 342, copy attached).

5. For the reasons set forth below, ARI files this objection (the “**Cure Claim Objection**”) to the Debtors’ Cure Notice with respect to the Master Agreement.

² Affiliates is defined in the Master Agreement for Fleet Vehicle Leasing and Maintenance Services dated effective as of December 1, 2009, as amended from time to time.

LIMITED OBJECTION

6. As of the filing of this Cure Claim Objection, the monetary Cure Claim of ARI with respect to the Master Agreement is an amount not less than \$3,796,924,³ which includes \$5,309,590 due to ARI for pre-petition services and charges, less pre-petition credits of \$1,924,095, plus \$1,012,446 due to ARI for post-petitions services and charges, less post-petition credits of \$601,016. A summary of the ARI Cure Claim is attached as Exhibit A. Spreadsheets of the transactions which support the monetary cure claim are attached as *in globo* Exhibit B.

7. In order to assume and assign the Master Agreement, the Debtors must cure the aforementioned defaults.

8. This Cure Claim Objection is without prejudice to the fact that other and additional cure claim amounts (a) may exist and/or may become known at a future date and (b) will accrue on an ongoing basis between the filings of this Cure Claim Objection and any subsequent assumption of the Master Agreement. ARI expressly reserves its right to amend or supplement its Cure Claim Objection though and including the effective date of any proposed assumption and assignment of the Master Agreement.

WHEREFORE, ARI respectfully requests that this Court enter an Order:

- a. Sustaining this Limited Objection;
- b. Requiring that the ARI Cure Claim be in an amount consistent with the specific requests set forth herein; and
- c. Granting ARI such other and further relief as the Court deems.

³ This amount was calculated after applying a payment that was made to, and received by, ARI on January 25, 2019, in the amount of \$1,228,330.80; as such, said payment may not have yet cleared.

Respectfully submitted, this 25th day of January, 2019.

McGLINCHEY STAFFORD, PLLC

/s/ Richard A. Aguilar

Richard A. Aguilar, Esq. (Admitted *Pro Hac Vice*)

Rudy J. Cerone, Esq. (Admitted *Pro Hac Vice*)

Mark J. Chaney, Esq. (Admitted *Pro Hac Vice*)

12th Floor, 601 Poydras Street

New Orleans, Louisiana 70130

Telephone: (504) 586-1200

Facsimile: (504) 596-2800

Attorney for

Automotive Rentals, Inc. and ARI Fleet LT

2217730.4